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# A PRIMER ON GOVERNMENT LABOR RELATIONS IN MISSOURI

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## ABSTRACT

Missouri law regulating government labor relations has changed quite a bit over the past 70 years, but in 2007 when the Missouri Supreme Court threw out decades of precedent with *Independence NEA v. Independence School District*, it marked a radical change for government unions and the organizations with which they negotiate. Since then, public agencies, government unions, and the public have all struggled to make sense of their respective rights and obligations under this rapidly changing body of law. This primer will guide the reader through the basics of collective bargaining, the legal framework for government unions in Missouri, and the major actors and practices at play in Missouri government labor relations.

## EXECUTIVE SUMMARY

In early 2011, around 100,000 protesters stormed the Wisconsin Capitol to protest Governor Scott Walker's government labor and pension reforms.<sup>1</sup> Protesters refused to leave the capitol,<sup>2</sup> legislators in opposition to the reform fled the state to prevent the reform bill from being considered,<sup>3</sup> and police found firearms and ammunition placed outside the capitol, suggesting serious intimidation from one or both sides of the protest.<sup>4</sup> Since then, other states, such as Ohio,<sup>5</sup> Pennsylvania,<sup>6</sup> Maine,<sup>7</sup> Michigan,<sup>8</sup> Illinois,<sup>9</sup> and Indiana,<sup>10</sup> have taken various steps to reform government labor relations, igniting high-profile union backlash and serious debate about the role of government unions in society.

The critics of government unions argue that these unions obstruct the functioning of government and distort the political process.<sup>11</sup> They argue that government collective bargaining shifts power away from the democratic process and that government unions have special rights and privileges other private institutions do not and should not enjoy. To the critics, these special privileges allow government unions to become too powerful, effectively taking control of political bodies and using them to enrich themselves at the expense of everyone else.

Defenders of government unions argue that these criticisms are overblown and that the special rights and privileges enjoyed by government unions are needed to

protect the interests of government employees.<sup>12</sup> They see government employment as providing a safe harbor for the middle class, secure from the uncertainties of the market, which government unions help protect. Defenders also argue that the political power of government unions helps to increase the production of public goods that otherwise might be underproduced and can promote important social justice causes.

Regardless of whether these criticisms and defenses of government unions hold true, Missourians have an interest in how government unions operate in their state. Missouri citizens interact and depend on workers who are often government union members. Police officers and firefighters protect citizens, health care workers care for many sick and elderly citizens, and many citizens send their children to public schools, which are staffed by teachers, librarians, bus drivers, and service employees. All of whom may be government union members.

With recent developments in the case law governing Missouri government unions and general confusion about how government collective bargaining works, most citizens of the Show-Me State may be in the dark about an institution that can have a very real and powerful influence on their lives.

The purpose of this primer is to provide a basic understanding of the context in which Missouri government unions bargain over the conditions of their members' employment. Although this study is intended for a general audience, it is also useful for readers familiar with government unions, such as government employees, activists, or students. This primer is divided into the following seven parts:

- An overview of government collective bargaining;
- An explanation of the legal framework for government collective bargaining laid out by Missouri's government labor relations statute (the Public Sector Labor Law);
- An explanation of the legal framework for government collective bargaining for employees exempt from the Public Sector Labor Law;
- A survey of the types of government employees



represented by unions in Missouri;

- An overview of the common practices of government unions;
- Answers to frequently asked questions about Missouri government unions; and
- A glossary of labor terms.

This primer focuses exclusively on government unions and does not address private-sector labor issues. My hope is that this publication will be used by Missouri citizens to foster a deeper understanding of the operations of their government.

## **GOVERNMENT COLLECTIVE BARGAINING: THE BASICS**

Collective bargaining is commonly understood as a negotiation between a union and an employer over the conditions of employment. Unions and employers negotiate core financial terms of employment like salary and benefits as well as many other conditions of employment, including hiring and outsourcing policies, employee discipline and grievance procedures, workplace safety procedures, and workplace policies that help the union continue to operate as the representative of its members.

The collective bargaining process yields a collective bargaining agreement. Also known as a union contract or labor agreement, this legal document binds the employer and any employees or employee associations subject to the agreement to the terms specified in the document.

Collective bargaining ordinarily takes place between the employer and a union designated as the exclusive bargaining representative for the employees.<sup>13</sup> Exclusive representative status is a special privilege awarded by the government to a union. Exclusive representative status gives a union the privilege of bargaining on behalf of all the employees within a given group of employees, called a bargaining unit.

When a union gains exclusive representative status, all other associations and individuals are unable to intercede or represent an employee in negotiations with the employer over the conditions of employment. The

entire bargaining unit is represented by the exclusive representative, regardless of whether a member of the bargaining unit would prefer to go without such representation.

Although government unions often seek exclusive representative status, collective bargaining need not take place with an exclusive representative. Some Missouri school districts, such as Hillsboro and Warren,<sup>14</sup> bargain with multiple unions to generate a labor agreement. Representation by multiple unions increases the options employees have and brings more voices to the bargaining table. Proponents argue that representation by multiple unions incentivizes unions to provide better service, because unsatisfied members may join an alternate union without forfeiting their place in the collective bargaining process.<sup>15</sup>

## ***GOVERNMENT EMPLOYEE ASSOCIATIONS VERSUS GOVERNMENT UNIONS***

Although all government unions are associations of government employees, not all government employee associations are government unions. In fact, calling a government union a *union* may be misleading because traditional union activity is often only one of many activities in which a government employee association engages.

Missouri government employees form numerous private associations, from small social clubs to professional development societies. Some of these associations are affiliated with traditional labor unions, some have a long history as professional or trade organizations without much traditional union activity, and some provide professional development and mutual aid to members without engaging in any collective bargaining activity.

The Fraternal Order of Police is one example of a government union that does more for its members than engage in traditional union activity. The Fraternal Order promotes education, support, and legal representation for its members. Only recently have some Fraternal Order lodges begun negotiating union contracts and engaging in more traditional union activity.<sup>16</sup> Should the Fraternal Order be considered a government union?

This primer focuses on government employee associations insofar as they engage in traditional labor

union activity; that is, representing employees in dealing with their employers, primarily through the collective bargaining process. For convenience sake, I refer to government employee associations as unions if they engage in bargaining with management.

### ***GOVERNMENT UNIONS VERSUS TRADITIONAL PRIVATE-SECTOR UNIONS***

Government unions need to be distinguished from traditional private-sector unions. Government unions have different incentives, goals, and legal rights than traditional unions by virtue of the fact that government unions represent employees of government rather than private entities. And government has a very different function and mode of operation than any private entity.

One key distinction between government unions and private-sector unions is how government and private businesses generate revenue. While an employer providing goods and services in the marketplace provides the source of payments for the members of a private-sector union, government funds provide the source of payments for members of a government union.

Put another way, market processes fund traditional unions and political processes fund government unions. Hence, private-sector unions and government unions face a different set of incentives. Traditional private-sector unions face a strong incentive to keep a business productive so that company revenues remain high and their members can be paid more. Government unions face an incentive to influence government decision-makers in order to win wage and benefits increases.

The difference between government unions and private-sector unions is even more pronounced in the collective bargaining process. Both government unions and private-sector unions can make campaign contributions, support candidates, and run get-out-the-vote drives using their members and their members' families, but only government unions can use political activity to select the person with whom they'll bargain for a union contract. The people with whom a government union must collectively bargain are usually either elected through the democratic process or answer to someone who is. Through political activity, government unions can sit on both sides of the bargaining table.

There is another important difference between these unions. Citizens have special rights against government, which they do not have in the private sector. Examples include the right to transparency in government affairs, a vote in government elections, and the ability to petition the government for a redress of grievances. Citizens have these special rights because of the special power government has over citizens, such as the power to tax, the power to maintain a monopoly on basic services that citizens depend on, and the power to deprive citizens of life, liberty, and property.

Government unions represent the workers who carry out the functions of government. Accordingly, government unions may be subject to special duties and constraints in order to protect the liberty interests of citizens against their government.

### **THE LEGAL FRAMEWORK**

Employees of Missouri state and local government entities have a constitutional right to form employee associations and collectively bargain with their employers.<sup>17</sup> This means that, within a certain legal framework, government employees may unionize and likely have the ability to bind their employer to a union contract.

For most unionized government employees, the Public Sector Labor Law sets this legal framework.<sup>18</sup> The Public Sector Labor Law establishes the basics of a government union meet and confer process<sup>19</sup> and gives the state board of mediation the power to decide union certification, decertification, and bargaining unit issues.<sup>20</sup>

For government employees exempt from the Public Sector Labor Law, most notably teachers and police, collective bargaining law is less settled. A line of recent Missouri Supreme Court cases holds that a provision in the state constitution protects the right of government employees to engage in collective bargaining.<sup>21</sup> In practice, this line of cases provides a new framework for collective bargaining for government employees exempt from the Public Sector Labor Law.

Federal government employees based in Missouri are not subject to Missouri law regarding collective bargaining.

## *THE PUBLIC SECTOR LABOR LAW: THE STATUTORY FRAMEWORK FOR GOVERNMENT UNIONS IN MISSOURI*

In 1965, the Missouri General Assembly enacted its first government employee labor relations statute.<sup>22</sup> The act was replaced in 1967 by the Public Sector Labor Law, which, with one further amendment, is Missouri's current statute governing government employee labor relations.<sup>23</sup>

The Public Sector Labor Law codified the rights of government employees to form and join labor organizations and to present proposals to their employers through representatives of their own choosing. The law specified the procedure for public bodies to confer with unions and gave the State Board of Mediation the authority to resolve issues relating to bargaining units and majority representative status.<sup>24</sup> The law expressly does not grant employees the right to strike.<sup>25</sup> The Public Sector Labor Law also excludes police, deputy sheriffs, Missouri state highway patrolmen, Missouri National Guard, and teachers of Missouri public schools, colleges, and universities from its provisions, leaving these employees without a statutory basis for discussing conditions of employment through a government union.<sup>26</sup>

Employees in job classifications as diverse as firefighters, home health care workers, correctional officers, parole officers, maintenance workers, and non-teaching employees of school districts may be members of an employee association that meets and confers with government bodies within the framework laid out by the Public Sector Labor Law.<sup>27</sup>

### *THE BARGAINING PROCESS*

The Public Sector Labor Law requires government unions to act as the exclusive bargaining representative when negotiating on behalf of employees.<sup>28</sup> The law defines “exclusive bargaining representative” as “an organization which has been designated or selected by majority of employees in an appropriate unit as the representative of such employees in such unit for purposes of collective bargaining.”<sup>29</sup> This means that a majority of the employees

composing a bargaining unit must select a union to act as their representative in order for that union to obtain exclusive representative status. State Board of Mediation regulations provide that the board shall certify an organization as the exclusive bargaining representative when the board holds an election and a majority of voters in the election select the organization.<sup>30</sup>

The law specifies a two-step bargaining process for government unions and employers to follow. First, the exclusive representative presents a proposal to the government body or its representatives, and the exclusive representative and that body must “meet, confer, and discuss” the proposal.<sup>31</sup> Second, results of the discussion are reduced to writing and “presented to the appropriate administrative, legislative or other governing body in the form of an ordinance, resolution, bill or other form required for adoption, modification or rejection.”<sup>32</sup>

This process differs from bargaining in the private sector, where representatives of the union and the employer have the authority to bind their party to a union contract. Under Missouri law, a party may take the proposal reached in the bargaining session back to another body for adoption.



## ***THE STATE BOARD OF MEDIATION: RESOLVING UNION CERTIFICATION AND BARGAINING UNIT ISSUES***

The Public Sector Labor Law tasks the State Board of Mediation with resolving issues relating to the appropriateness of bargaining units and exclusive representative status.<sup>33</sup> The Board of Mediation is a five-member administrative body composed of two members representing labor unions, two members representing employers of labor, and one member who is neither a member of a labor union nor an employer of labor.<sup>34</sup>

When a union seeks to have the State Board of Mediation certify it as the exclusive representative for a group of government employees, the union files



a petition with the board.<sup>35</sup> The petition includes a showing of interest stating that at least 30 percent of the employees in the bargaining unit support certification. The board then holds conferences with the parties.<sup>36</sup> If the parties agree to a description of the bargaining unit, the board conducts an election among the bargaining unit to certify the union as the exclusive representative.<sup>37</sup> If a majority of the votes cast are for representation by the union, the board issues an order certifying the union as the bargaining unit's exclusive bargaining representative.<sup>38</sup>

If a group of employees want to decertify a union as the exclusive representative, a similar process is followed. Employees file a petition with the board and the board conducts an election to decertify the union.<sup>39</sup> If the majority of votes are for decertification, then the board issues an order decertifying the union as the bargaining unit's exclusive representative.

If there is a disagreement between the employer and the union in defining the bargaining unit or if there is an issue regarding the conduct of an election, the board conducts a hearing.<sup>40</sup> A party to the hearing may appeal a board decision to court.

The board also handles petitions to amend certification to reflect changed circumstances, such as when there has been a reorganization of government agencies,<sup>41</sup> and petitions for unit clarifications, such as when parties disagree about whether certain employment positions should be included within a bargaining unit.<sup>42</sup>

Sometimes a union will have an election to determine which members of the union will take on an executive role within the union. For example, a firefighters' union may have internal procedures for selecting a new shop steward. The board does not handle these elections.

An employer may also voluntarily recognize a union as the majority representative of a group of employees. This is at the discretion of an employer and is granted outside the authority of the State Board of Mediation and the certification process.<sup>43</sup>

## **COLLECTIVE BARGAINING FOR GOVERNMENT EMPLOYEES EXEMPT FROM THE PUBLIC SECTOR LABOR LAW**

Police, deputy sheriffs, Missouri state highway patrolmen, Missouri National Guard, and teachers of Missouri public schools, colleges, and universities are excluded from the Public Sector Labor Law.<sup>44</sup> To understand why these employees were excluded from the Public Sector Labor Law, look at the history of government unions in Missouri.

In 1945, Missouri voters ratified the current constitution, which included the following clause in its bill of rights, "employees shall have the right to organize and to bargain collectively through representatives of



their own choosing.”<sup>45</sup> Two years later, the Missouri Supreme Court held that this provision did not apply to government employees in *City of Springfield v. Clouse*.<sup>46</sup>

In *Clouse*, the city of Springfield sought a declaratory judgment determining the power of the city to make collective bargaining agreements with labor unions representing city employees. The court reasoned that “[s]uch bargaining could only be a usurpation of legislative powers by executive officers,” and therefore a collective bargaining agreement would violate the non-delegation doctrine.<sup>47</sup> Moreover, it would violate the principle that a legislature cannot “bind itself or its successor to make or continue any legislative act.”<sup>48</sup> The court concluded that “[u]nder our current form of government, public office or employment never has been and cannot become a matter of bargaining and contract.”<sup>49</sup> Hence, under *Clouse*, governments had no authority to deal with employees on a collective bargaining basis under the constitution and the constitutional provisions protecting the right to collectively bargain did not extend to public employees.

When *Clouse* was decided, no law in the United States gave collective bargaining rights to government employees.<sup>50</sup> At that time, even advocates for labor

unions tended to be skeptical about the unionization of government employees. Franklin D. Roosevelt, in a letter to the head of a union of federal employees, stated that:

All Government employees should realize that the process of collective bargaining, as usually understood, cannot be transplanted into the public service. It has its distinct and insurmountable limitations when applied to public personnel management. The very nature and purposes of Government make it impossible for administrative officials to represent fully or to bind the employer in mutual discussions with Government employee organizations. The employer is the whole people, who speak by means of laws enacted by their representatives in Congress. Accordingly, administrative officials and employees alike are governed and guided, and in many instances restricted, by laws which establish policies, procedures, or rules in personnel matters.<sup>51</sup>

However, by the 1960s the tides changed, and the idea of government unions gained acceptance. In 1962, President John Kennedy signed Executive Order 10988, giving federal employees the ability to

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**“PARTICIPATION OF  
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OF PUBLIC BUSINESS.”**

**—JOHN F. KENNEDY**



collectively bargain. In the mid-1960s, the Missouri General Assembly enacted the Public Sector Labor Law, and Missouri government unions were given a legal framework for collective bargaining.<sup>52</sup>

However, the Public Sector Labor Law expressly exempted police, deputy sheriffs, Missouri state highway patrolmen, Missouri National Guard, and teachers of Missouri schools, colleges, and universities from its provisions. With *Clouse's* general prohibition on collective bargaining still firmly in place and the Public Sector Labor Law making an express exemption for teachers and police, certain government functions, such as public education and law enforcement, were still thought of as inappropriate subjects of collective bargaining.

For decades, teachers and police associations represented their members without the ability to collectively bargain. Then, in 2007, the Missouri Supreme Court overturned the longstanding *Clouse* case with *Independence NEA v. Independence School District*. Discarding decades of precedent, in *Independence*, the court interpreted the Missouri Constitution as giving all government employees the ability to collectively bargain.<sup>53</sup>

In making this ruling, the government employees excluded from the Public Sector Labor Law and their employers were suddenly thrown into a position where their informal agreements could become legally binding. To further complicate matters, the lack of a statutory scheme governing the representation and bargaining process meant the law was unclear as to what rights and duties the parties would owe each other.

#### ***CASES FOLLOWING INDEPENDENCE***

Under the *Independence* ruling, each employer has the duty of adopting its own labor relations policies for its employees that are exempt from the Public Sector Labor Law. These policies are subject to legal challenge and may be found illegal by the courts if they do not comport with the new interpretation of the Missouri Constitution handed down in the *Independence* case. Courts have struggled with this task, often applying principles from federal labor law and reading substantive duties into very little text.<sup>54</sup>

In 2012, the Missouri Supreme Court issued two opinions holding that Section 29 of Article 1 imposes affirmative duties on employers of employees excluded from the Public Sector Labor Law. In *Coalition of Police v. Chesterfield*, the court held that the constitution



imposed an affirmative duty on the cities of Chesterfield and University City to bargain with representatives of their police.<sup>55</sup> The court further ordered these cities to recognize the unions as the exclusive bargaining representatives for these cities' police and sergeants and to collectively bargain by meeting and conferring with the unions.<sup>56</sup>

In *American Federation of Teachers v. Ledbetter*, the court held that the collective bargaining clause in the constitution imposes an affirmative duty on a school board to meet and confer and negotiate in good faith with its teaching employees, remanding for adjudication the issue of whether the school board negotiated in good faith.<sup>57</sup>

The recent line of supreme court cases makes it clear that the constitution will be interpreted as giving school districts and police departments an affirmative duty to collectively bargain and negotiate in good faith with their employees excluded from the Public Sector Labor Law. However, the issues of whether the constitution requires employers to give these employees the option of exclusive representation and what policies constitute collective bargaining as the term is used in the constitution remain unclear.

## **MAJOR GROUPS REPRESENTED BY GOVERNMENT UNIONS**

This section presents some of the major classes of government employees subject to collective bargaining in the state of Missouri and gives details about employee associations specific to that class of employees.

### **FEDERAL EMPLOYEES**

Federal employees based in Missouri, such as postal workers, are subject to federal labor law. Any employees of the federal government who are also unionized are not subject to the collective bargaining framework laid down by Missouri law.

Workers subject to union representation can be found in federal agencies as diverse as the Department of Defense, the National Park Service, the Department of Housing and Urban Development, and the United States Postal Service.<sup>58</sup>

### **STATE EMPLOYEES**

Most state employees represented by a union are covered by the Public Sector Labor Law.<sup>59</sup> This means the process for collective bargaining is relatively well defined and the State Board of Mediation handles bargaining unit and union certification issues.



Traditional labor unions often represent state employees subject to union representation. Local chapters of unions such as the American Federation of State, County, and Municipal Employees (AFSCME), the Communication Workers of America (CWA), the Service Employees International Union (SEIU), and the International Union of Operating Engineers (IUOE) all maintain active labor agreements with various state agencies for various bargaining units.<sup>60</sup> State employees subject to such representation include parole officers, probation assistants, patient care professionals, service employees, maintenance employees, and health service workers.<sup>61</sup>



However, not all government employee unions need be affiliated with a traditional labor union. For example, correctional officers are represented by the Missouri Correctional Officers Association (MOCO), which is not affiliated with a traditional labor organization, such as AFL-CIO.

### *FIRST RESPONDERS*

Publicly paid firefighters and emergency medical service providers have long been members of unions in the Saint Louis and Kansas City regions. The International Association of Fire Fighters (IAFF), an affiliate of the AFL-CIO, often represents these first responders. Locals 42, 2665, and 73 represent firefighters in Kansas City, Eastern Missouri, and Saint Louis City, respectively.

Another important association of firefighters is the Firefighters Institute for Racial Equality (FIRE). FIRE formed in 1967 in order to oppose the IAFF local's racially discriminatory policies. Wendell H. Goins, one of the founders, summed up FIRE's position stating, "Giving the Local Union 73 our dues money is just like giving somebody the money to buy bats and bullets to bust us up-side the head with!"<sup>62</sup> When the IAFF has exclusive representative status, groups like FIRE are only able to represent their members as a supplementary professional society and have no right to negotiate directly over the terms and conditions of employment.

### *HOME HEALTH CARE WORKERS*

In 2008, Missouri voters passed Proposition B, a ballot initiative creating the Missouri Home Care Council. The initiative summary read:

Shall Missouri law be amended to enable the elderly and Missourians with disabilities to continue living independently in their homes by creating the Missouri Quality Homecare Council to ensure the availability of quality home care services under the Medicaid program by recruiting, training, and stabilizing the home care workforce?<sup>63</sup>

The initiative summary neglected to mention that Missouri already had a consumer-directed healthcare program in place to help people in need of this kind of care stay in their homes. Furthermore, the summary made no mention of the fact that the initiative changed

the law to allow a union to become the exclusive bargaining representative for the people receiving Medicaid for taking care of the elderly and disabled. The Missouri Home Care Union, a joint local union affiliated with both SEIU and AFSCME, now represents home health care workers.<sup>64</sup>

### *TEACHERS*

Teachers are excluded from the Public Sector Labor Law and, therefore, collectively bargain in accordance with the rules laid down in the *Independence* line of cases.<sup>65</sup>

Prior to the *Independence* case, many school districts already met with teachers' associations to discuss conditions of employment. This informal discussion process was referred to as "meet and confer." Over time, some school districts and teachers' associations increasingly treated meet and confer discussions as a more formal negotiation process. When the Missouri Supreme Court imposed collective bargaining duties on school districts with the *Independence* decision, it treated a meet and confer document as a legally binding collective bargaining agreement, a radical departure from the traditional meet and confer framework many school districts still use.<sup>66</sup>



Currently, meet and confer occupies an ambiguous status in Missouri. Many schools consider their discussions to be meet and confer discussions, rather than collective bargaining.<sup>67</sup> It is an open question to what extent the courts will treat any document developed in discussions between a school district and a teachers' association as binding.

The American Federation of Teachers (AFT), the Missouri National Education Association (MNEA), and the Missouri State Teachers Association (MSTA) are the three major associations that represent teachers in negotiations with their employers.

AFT represents the teachers of the Kansas City and St. Louis City school districts. AFT is affiliated with AFL-CIO and describes itself as “a union of professionals that champions fairness; democracy; economic opportunity; and high-quality public education, healthcare and public services for our students, their families and our communities.”<sup>68</sup> As a national union, AFT has locals across the country and is active in national politics.

MNEA represents teachers throughout the state and is often the exclusive bargaining representative for teachers in the larger metropolitan areas. MNEA and its local branches are affiliated with the National Education Association, and members of MNEA are required to pay dues to the NEA as well. Like AFT, NEA is a national union and active in national politics.

MSTA is a teachers’ association with thousands of members throughout the state.<sup>69</sup> MSTA separated from MNEA in 1972 when its members were going to be forced to pay dues to the NEA if they continued to be affiliated with the NEA.<sup>70</sup> Although MSTA acts as exclusive bargaining representative for teachers in some school districts, such as Lincoln County and St. Joseph,<sup>71</sup> it has a presence throughout the state where it often represents teachers without negotiating a formal union contract.

Many teachers join a teachers’ association for liability insurance and other benefits that are unrelated to collective bargaining. For teachers who want to be a member of a professional society but prefer not to pay for collective bargaining and union political activity, several non-union alternatives are available to Missouri teachers, such as the Association of American Educators.<sup>72</sup>

## **POLICE**

Police are excluded from the Public Sector Labor Law and therefore have not had an avenue for legally enforceable collective bargaining agreements until recently. Despite this, the fraternal orders representing



police have a long history. Prominent Fraternal Order lodges include the St. Louis Police Officers Association, the Kansas City Fraternal Order of Police, and the Jefferson City Fraternal Order of Police.

Since the *Independence* case, some fraternal orders of police have begun collective bargaining on behalf of their members.<sup>73</sup> Where fraternal orders have obtained a collective bargaining contract, union security clauses, such as forced agency fees, are common.<sup>74</sup> For a discussion on agency fees, see below.

In some cities, such as Saint Louis, officers and sergeants constitute two separate bargaining units with separate collective bargaining agreements and different exclusive representatives.<sup>75</sup>

The Ethical Society of Police is another important organization representing police in the Saint Louis area. Similar to FIRE, a group of African-American police officers founded the Ethical Society of Police in the early 1970s. The Ethical Society of Police does not currently represent officers in a collective bargaining capacity and instead acts as a professional association with the motto “We are the conscience of the St. Louis Police Department.”<sup>76</sup> When a Fraternal Order Lodge obtains an agency fees provision in its collective bargaining agreement, members of an alternative police association, such as the Ethical Society, must pay dues to both organizations.



## COMMON PRACTICES

Beyond negotiating with an employer in the collective bargaining context, government unions engage in other practices on behalf of their members or in order to maintain their position as the exclusive bargaining representative. Many of these practices are described in the collective bargaining agreement. This section describes some of the activities and practices in which government unions often engage.

### *GRIEVANCE ADJUSTMENT*

An employee has a grievance when he or she believes he or she has been mistreated by the employer or the employer has failed to abide by the collective bargaining agreement. Unions often negotiate a grievance procedure that is included in the memorandum of understanding or collective bargaining agreement. When a grievance procedure is included in this document, the union typically will represent employees with grievances and assist them in having their grievances resolved, sometimes before arbitration.

### *AGENCY FEES*

Government employees subject to the Public Sector Labor Law may not be compelled to join a union.<sup>77</sup> However, a union with exclusive representative status often can force non-members to pay the union for the costs of representation.<sup>78</sup> Union contracts call these mandatory payments made by non-members “agency fees” or “fair share fees.”<sup>79</sup> If a union contract contains an agency fee provision, then the union can have an employee fired for refusing to pay agency fees.

Unions justify agency fees on the grounds that they offset the problem of free riders. Suppose a firefighter works for a fire district and the majority of the other firefighters decide to form a union. The firefighter who does not want to join might not want to pay for the union’s representation. The firefighter might argue that the union should earn his support by doing something he feels benefits him and that only then would he choose to pay the union. However, the union might respond that if he doesn’t pay the union for the costs of representation, then he’s getting the benefits of representation for free while everyone else pays. Hence, the union defines the firefighter who refuses to pay

dues as a free rider. In order to overcome the perceived problem of free riders, the union might seek to force payments through an agency fees provision in its collective bargaining agreement.

Labor unions are not the only type of organization facing a purported free rider problem. For any group that would benefit from forming an organization to represent their collective interests, such as a group of businesses that would benefit from a trade association, there will be individuals who might seek to benefit from the actions of this group without contributing to it themselves. With an agency fee provision in a union’s contract, a union can collect dues from all of the people subject to the union contract, greatly reducing the need to solicit voluntary contributions. Agency fees give government unions a distinct advantage over most other politically active special interest groups, which need to devote a significant share of resources to fundraising and membership services.

Agency fees are common with fire and EMS unions. Employees of municipal governments and non-teaching employees of school districts in urban areas may be subject to agency fee provisions as well. Since the *Independence* case in 2007, some Fraternal Orders of Police have begun imposing agency fees on non-members.<sup>80</sup>

At the state level, SEIU has put conditional agency fee provisions in its contracts.<sup>81</sup> This means that when another bargaining unit maintained by the state puts an agency fee provision in its contract, the conditional agency fee provisions will become active as well. Currently, the state is not subject to a labor agreement with an agency fee provision, but if the state binds itself to a contract with such a provision, all of the contracts with conditional agency fee provisions will begin to require agency fees.

Agency fees are subject to constitutional limits. The fees are collected to pay for the benefit the exclusive representative confers on the non-member employee and should not be used to pay for unrelated union expenses.<sup>82</sup> For example, a union should not use agency fees for political expenditures or organizing other unions.

Employees with bona fide religious objections to unionization may opt out of agency fee payments. Collective bargaining agreements may include a specific procedure that a religious objector must follow to opt out of agency fees.

### *RELEASE TIME*

Paid release time is a practice where the government gives employees time off work, without a corresponding decrease in pay, to engage in union-related activities. For example, a teachers' union contract may allow a teacher with an executive role in the union paid time off to attend national union events or lobbying events in Jefferson City.

Release time is controversial. Some people believe that release time is a use of public resources that does not confer a benefit on the public, and therefore constitutes an illegal gift of public funds.<sup>83</sup>

Public school teachers' collective bargaining agreements, state employee union contracts, and other government union contracts commonly contain release time provisions. The amount of release time actually used and the value of public resources paid pursuant to release time provisions is currently unknown.

### *DUES CHECK-OFF*

Government union contracts often have a provision specifying that a union member may have dues automatically withheld from his or her paycheck by the employer. These provisions are called "dues check-off" provisions. With a dues check-off provision included in a union contract, the government acts as the bill collector for a union, collecting dues and fees from employees and remitting them to the union.

### *CANCELLATION OF MEMBERSHIP PROCEDURES*

Most collective bargaining agreements have a provision specifying the procedure that a member must follow to cancel his or her membership in the union. These provisions often specify a certain timeframe once a year in which a member must submit appropriate forms to the union.

### *EVERGREEN CLAUSES*

Sometimes a collective bargaining agreement will include a provision that says that its provisions will remain in effect until both parties agree to a new contract. These provisions are called "evergreen clauses" because they have the potential to make a contract last indefinitely.



Some consider evergreen clauses useful because they keep a contract's provisions effective in case the management and the union cannot reach a new agreement. Others criticize the use of evergreen clauses, arguing that such provisions create a situation where compensation and other benefits can be ratcheted up in the union's favor but are unlikely to be reduced when circumstances change.

To understand the controversy surrounding evergreen clauses, consider the case of a fire protection district that agrees to a collective bargaining agreement with very generous contract terms. Suppose there is a recession several years after the contract takes effect. The term of the original agreement has expired, and the district can no longer sustain the generous salary, benefits, work rules, and paid time off it provides. When the district's management moves to rein in the unsustainable provisions of the collective bargaining agreement, management and the union cannot come to a new agreement.

If the original collective bargaining agreement contained an evergreen clause, then the District's hands are tied. The salary, benefits, work rules, and time off provided for in the old contract remain, unless the union voluntarily agrees to a new contract.

### *MULTIPLE REPRESENTATION*

The Public Sector Labor Law requires government collective bargaining to take place between the employer and an exclusive representative. However, employees exempt from the Public Sector Labor Law may be represented by multiple unions. This is already the case with some school districts, including Hillsboro and Warren, where both MSTA and MNEA represent employees in negotiations with management.<sup>84</sup>

Proponents argue that multiple representation can be beneficial because it gives employees options when it comes to union representation. If multiple employee associations are brought to the bargaining table, then diverse interests can be heard and employee associations have to compete to remain attractive to their members.

Because police are also exempt from the Public Sector Labor Law, they may engage in bargaining with multiple representatives. Most other government

employees would need to amend the Public Sector Labor Law in order to win a legally binding union contract negotiated by multiple employee associations.

### *STRIKES*

Government employees are prohibited from striking in the state of Missouri.<sup>85</sup> However, government employees sometimes do strike. In doing so, these employees risk their jobs. Collective bargaining agreements often state that striking is not permitted.<sup>86</sup>

### *POLITICAL ACTIVITY*

Unions are only one of many different special interests competing to have legislation and regulations enacted in their favor. However, politics is one of a labor union's main activities. According to a recent statement from the major labor unions themselves, "labor organizations have a long and established history of participating in political activities as part of their core mission[.]"<sup>87</sup> To that end, nearly all of the major labor unions participate in lobbying, voter registration, voter education activities, and "get-out-the-vote" drives.<sup>88</sup>

If unions participate in political activities as part of their core mission, this holds doubly true for government unions. Government unions depend on support from government decision-makers in order to meet their objectives. Political activity allows government unions to influence the appointment or election of the government officials with whom they will bargain for a union contract. For these reasons government unions have a strong interest in influencing the outcome of political decisions. Indeed, government unions are among the biggest spenders in politics.<sup>89</sup>

There can be a special relationship between political actors and government unions because of the way government unions are funded. The money at a government union's disposal comes from salaries paid to government employees, which in turn come from public revenues. The more a government union influences politicians to direct public revenues to expenditures that enrich the union, the more money the union can direct back to the politicians in the form of campaign contributions, lobbying, and electioneering activity. In this way, political actors dependent on support from unions and government unions dependent on





support from political actors may develop a symbiotic relationship.

A unique aspect of a government union's political power is its ability to collect revenue from all of the employees it represents. Most special interest groups have to fundraise constantly in order to keep a steady stream of revenue that they can use for political activity. However, a government union, relying on union security provisions in its contract, such as agency fees and dues check-off, may passively accept dues and fees from the employees it represents. This gives government unions a distinct advantage when competing with other interests to influence political decisions because they need not devote resources to fundraising and dues collection.

A government union's ability to mobilize government employees is also a very significant asset. By having access to a definite class of employees and the resources

to organize people, a government union can entice its members to play an active role in elections, voting for and promoting the policies the union's executives deem to be beneficial. For example, a union representing firefighters may send firefighters door to door to influence the outcome of an election. Or a teachers' union might have teachers tell their students and their students' parents about a particular bill before the legislature.

A government union can also make "in-kind" donations to benefit allied organizations, and these organizations can return the favor with support later on. For instance, a union can use its phones, offices, and members to assist a politician or another union with a political campaign.

In-kind donations and access to employees and their families can be very helpful but are hard to report in a meaningful way. Accordingly, the full political power and activities of government unions are difficult to measure.

## FREQUENTLY ASKED QUESTIONS

*What's the difference between a government union and a private-sector union?*

A government union differs from a private-sector union to the extent that government differs from a private business. Government unions have a different set of incentives, aims, and legal constraints than private-sector unions. An individual also has certain rights against the government, such as the rights to petition, transparency, and suffrage, that he or she does not have against a private entity.

In short, because a government entity is not a traditional employer, an association of government employees should not be understood as equivalent to a traditional private-sector labor union.

*How does a union become the exclusive bargaining representative for a class of government employees?*

If the employees are covered by the Public Sector Labor Law, the State Board of Mediation handles certification of the union as the exclusive bargaining representative.<sup>90</sup> In order to be certified, the board holds an election in which a majority of voters select the union to act as



the exclusive representative. Alternatively, an employer may voluntarily recognize a union as the exclusive representative.<sup>91</sup>

If the employees are exempt from the Public Sector Labor Law, then the employer will set a labor policy determining the procedure that the employer will use to recognize a representative. For teachers, this often means there will be two rounds of elections: one where teachers decide whether to have an exclusive representative, multiple representatives, or no representatives, and another where teachers decide who that representative will be.

#### *How does a government union lose exclusive bargaining representative status?*

If the employees are covered by the Public Sector Labor Law, the State Board of Mediation handles decertification.<sup>92</sup> The Board of Mediation holds a decertification election, analogous to a certification election, after a sufficient number of employees petition to decertify a union.

If the employees are exempt from the Public Sector Labor Law, then the law is unclear. However, the employer has the responsibility for developing a labor policy to handle labor relations issues.

#### *Can a government employee be forced to join a government union?*

The Public Sector Labor Law prevents a government employee from being forced to join a union. However, a government employee can be forced to financially support a government union through agency fees.

#### *What's the difference between a government union and any other association of government employees?*

For the purposes of this primer, I am calling an association of government employees a union when they negotiate with an employer over the conditions of employment. There are government employee associations that do not perform this union role, such as FIRE, and there are government employee associations that have not taken on this union role until relatively recently, such as the St. Louis Police Officers Association.

#### *Are union negotiations subject to Missouri's Open Meetings and Records (Sunshine) Law?*

Negotiation meetings between a government entity and a government employee union for the purpose of negotiating a collective bargaining agreement likely can be closed.<sup>93</sup> Section 610.021 RSMo. provides that public government bodies may close meetings, records, and votes to the extent they relate to a negotiated contract until that contract is executed or all proposals are rejected. This provision likely allows government bodies to close contract negotiations with government unions. However, the law does not *require* government bodies to close these meetings. Also, after the negotiation, when a written contract is subject to adoption, modification, or rejection by the government body, the meeting may no longer be kept closed.<sup>94</sup>

#### *Why are teachers' unions and police unions exempt from the state statute regulating government employee unions?*

When the Missouri Legislature passed the Public Sector Labor Law, they did not wish to give organizations of teachers and police the ability to collectively bargain. In the early 20th century, government unions were viewed as potentially dangerous. When the Public Sector Labor Law was passed, government unions were just beginning to gain acceptance. However, law enforcement and education were still thought of as services too crucial to be made subject to collective bargaining between employers and employees.

The Missouri Supreme Court gave teachers' associations and police associations the legal ability to collectively bargain in 2007 with the *Independence* decision.

#### *Is Missouri a right-to-work state?*

No. Missouri is not a right-to-work state. Right to work refers to a law that prevents private-sector unions from being able to fire an employee for refusing to pay fees to the union. Federal law preempts most state laws that would regulate private-sector labor relations; however, section 14(b) of the Taft-Hartley Act authorizes states to enact right-to-work laws.

Because Missouri is not a right-to-work state, state law does not prevent a union from having an employee fired for refusing to support it.

## GLOSSARY

**Agency Fees** – Also called “fair share” fees, agency fees are dues that employees who are represented by a union, but not a member of that union, are forced to pay. In theory, the union may only spend these fees on representational activities such as contract bargaining and grievance adjustment. In practice, these fees are sometimes as expensive as, or nearly as expensive as, regular union dues, raising questions of whether agency fees are subsidizing non-representational activities such as political lobbying.

**Agency Shop** – A place of employment where all employees represented by a union must pay agency fees to the union pursuant to a collective bargaining agreement.

**Bargaining Unit** – The set of employees represented by a union with exclusive representative status. This set of employees need not be identical to the set of employees who are actually union members and may include employees who do not wish to be represented by a union.

**Blue Flu** – An informal, and usually illegal, strike of police or firefighters. It is known as “blue flu” because striking employees often call in sick to provide legal cover for an illegal work stoppage.

**Certification** – The process whereby the government awards a union exclusive bargaining representative status.

**City of Springfield v. Clouse, 36 Mo. 1239 (Mo. banc 1947)** – The Missouri Supreme Court case where the court found that the Missouri Constitution’s bill of rights did not give a government union the right to bargain with government decision-makers on behalf of its members. The case was overturned by the court in 2007 with the *Independence* case.

**Closed Shop** – A place of employment where all employees represented by a union must be union members.

**Collective Bargaining** – The process where a union negotiates the conditions of employment, including compensation, on behalf of the employees it represents. In the United States collective bargaining is often, but not always, conducted by a union acting as the exclusive representative of a class of employees. However, in some contexts collective bargaining may take place between multiple unions and an employer. Collective bargaining

could even be conducted on a “members only” basis, where a union negotiates only on behalf of those employees who agree to be represented by the union.

**Collective Bargaining Agreement** – Also known as a union contract, this legally binding document includes various terms and conditions of employment negotiated and agreed to by a union and an employer.

**Decertification** – The process whereby a union loses exclusive bargaining representative status.

**Dues Check-off** – A provision in a collective bargaining agreement specifying that a union member may have dues automatically withheld from his or her paycheck by the employer.

**Evergreen Clause** – A provision in a collective bargaining agreement specifying that the contract’s provisions will remain in effect until both parties agree to a new contract.

**Exclusive Representative** – An exclusive representative or exclusive bargaining representative is a union that has been awarded the privilege of being the only representative for a given class of employees. If employees are represented by an exclusive representative, then those employees may not select another association to represent them in the collective bargaining process, nor may they opt to represent themselves.

**Fair Share** – *See* Agency Fees.

**Fraternal Order of Police** – A national fraternal organization of law enforcement officials. In Missouri, police officers have long formed associations as local lodges of the Fraternal Order of Police. After the *Independence* case in 2007, Fraternal Order lodges have been acting as traditional labor unions, obtaining exclusive representation status and negotiating union contracts.

**“Good Faith” Standard** – In private-sector labor law, a union and an employer have the duty to negotiate in good faith with one another. In *American Federation of Teachers v. Ledbetter*, 387 S.W.3d 360 (Mo. banc 2012), the Missouri Supreme Court applied this standard to government labor relations. Some have argued that this standard, used in the private sector, should not be applied to Missouri government labor relations because it is not

in the text of the Missouri Constitution and because the same standards used to keep private-sector negotiations running smoothly do not work when applied to a political entity.

***Independence NEA v. Independence School District*, 223 S.W.3d 131 (Mo. banc 2007)** – This 2007 Missouri Supreme Court case overturned 60 years of precedent and the *Clouse* case by holding that the Missouri Constitution gives government unions the right to collectively bargain with government decision-makers.

**LM Filings** – Federal law requires private-sector labor unions with exclusive representation status to make certain financial filings. The federal government then discloses these filings to the public. In Missouri, government unions are not subject to the same transparency requirements.

**Maintenance of Membership Clause** – A union security clause found in some collective bargaining agreements that requires union members to stay members for the duration of the collective bargaining agreement.

**Meet and Confer** – A relatively informal employer-employee conferencing process. In Missouri government labor relations, the less formal meet and confer process has increasingly come to resemble the more formal collective bargaining process.

**Members-Only Representation** – An alternative to exclusive representation where unions only represent their members and nonmembers are free to represent themselves or choose another union to represent their interests.

**National Labor Relations Act (NLRA)** – The federal law governing labor relations in the private sector. Missouri courts have increasingly applied concepts and decisions from federal law to state and local government labor cases to resolve issues on which they lack guidance.

**One or None** – An alternative to exclusive representation where employees can choose between union representation or representing themselves. This policy has the advantage of protecting the interests of both the union and individual employees. The union only has the duty of representing and bargaining on behalf of its own members and therefore does not have to provide services

to employees who do not want to support the union. The individual is free from forced representation but still has the option of union representation.

**Open Shop** – A place of employment where workers are free to support or not support a union.

**Paycheck Protection** – Paycheck protection has been used to refer to a variety of policies that regulate union security clauses in collective bargaining agreements. Paycheck protection bills introduced in the Missouri Legislature have required a government union to annually receive affirmative consent from employees before collecting certain dues and fees.

**Public Sector Labor Law** – The statute that sets the framework within which most government unions must operate. Teachers and police are exempt. The law is codified in RSMo. 105.500 to 105.530.

**Right-to-Work Laws** – Laws that prevent a union from being able to fire an employee for refusing to join or pay money to the union. Right-to-work laws can apply to employees in both the private sector and the government.

**State Board of Mediation** – The state board that resolves issues related to exclusive representative status and bargaining units for government unions covered by the Public Sector Labor Law.

**Union Salt** – An agent of a union that seeks employment with an employer for the purpose of unionizing the employees.

**Union Security Clause** – Provisions of a union contract protecting the union's status as the representative of a set of employees. Examples include agency fees, dues check-off, maintenance of membership clauses, and closed shop provisions.

**Union Shop** – A place of employment where all employees represented by a union must join the union within a period of time after becoming employed.

## NOTES

- 1 Contorno, et al., “Police.”
- 2 Bailey and Carano, “Many Protesters Refuse to Exit Wisconsin Capitol.”
- 3 Johnson and Shipley, “Wisconsin Democrats Flee to Prevent Vote on Union Bill.”
- 4 Ariosto, “Wisconsin Governor Tells Absent Senators.”
- 5 Tavernise, “Ohio Turns Back a Law Limiting Unions’ Rights.”
- 6 Norquist and Gleason, “Pennsylvania as the New Wisconsin in Union Fights.”
- 7 Mistler, “State Workers’ Union ‘on the Precipice.’”
- 8 Egan, et al., “Michigan Lawmakers OK Right-to-Work Bills.”
- 9 Wisniewski, “Illinois Governor Makes Union Dues Voluntary for Some Workers.”
- 10 Billups, “Indiana’s Move Pushed Michigan.”
- 11 For an evenhanded treatment of many of the criticisms of government unions, see DiSalvo, *Government Against Itself*.
- 12 For a rejoinder to the recent criticisms of government unions and a defense of government unions, see Martin, “Does Public Employee Collective Bargaining Distort Democracy?” and Slater, “Public-Sector Labor in the Age of Obama.” The argument that government employment provides a “safe harbor” for the middle class is well treated in Donahue, *The Warping of Government Work*. For a treatment of the idea that government unions increase the production of public goods, see Freeman, “Unionism Comes to the Public Sector.”
- 13 RSMo. 105.520.
- 14 See Memorandum of Understanding 2013 – 2014, Hillsboro and Warren County National Education Association Warren County MSTA-CTA.
- 15 Another alternative to exclusive representation could be collective bargaining with members-only representation. With members-only representation, unions represent only their own members in the collective bargaining process, allowing non-members to negotiate on their own behalf. Proponents argue that this method of collective bargaining also can increase employee choice and quality of representation. See Vernuccio, “Unionization in the 21<sup>st</sup> Century.”
- 16 Only after the *Independence* decision in 2007 have Fraternal Orders had the ability to bind their employers to collective bargaining agreements. Fraternal Orders in the Saint Louis and Kansas City regions have done this.
- 17 See *Independence-NEA*, 223 S.W.3d 131.
- 18 § 105.500-.530 RSMo.
- 19 § 105.520 RSMo.
- 20 § 105.525 RSMo.
- 21 *Independence-NEA*, 223 S.W.3d 131; *Coalition of Police*, 386 S.W.3d 755; *American Federation of Teachers*, 387 S.W.3d 360.
- 22 Pritchett, “The Public Employee Labor Law in Missouri.”
- 23 § 105.500-.530 RSMo.
- 24 *Id.*
- 25 § 105.530 RSMo.
- 26 § 105.510 RSMo.
- 27 For state personnel, see “Active Labor Agreements,” Office of Administration, Division of Personnel. Other personnel union contracts are by local governments.
- 28 § 105.520 RSMo.
- 29 § 105.500 RSMo.
- 30 8 CSR 40-2.160.
- 31 § 105.520 RSMo.
- 32 *Id.*
- 33 § 105.525 RSMo.
- 34 § 295.030 RSMo.
- 35 8 CSR 40-2.020.
- 36 8 CSR 40-2.100.
- 37 *Id.*
- 38 8 CSR 40-2.160.
- 39 8 CSR 40-2.040.
- 40 8 CSR 40-2.140.
- 41 8 CSR 40-2.055.
- 42 8 CSR 40-2.050.
- 43 8 CSR 40-2.010(1)(H).
- 44 § 105.510 RSMo.
- 45 Missouri Constitution, Article 1, Section 29.
- 46 *City of Springfield*, 36 Mo. 1239.
- 47 *Id.* at 1251.
- 48 *Id.*
- 49 *Id.*
- 50 Slater, “Is Collective Bargaining a Term of Art?”
- 51 Roosevelt, “Letter on the Resolution of Federation.”
- 52 § 105.500-.530 RSMo.
- 53 *Independence-NEA*, 223 S.W.3d 131.
- 54 See *Springfield Nat’l Educ. Ass’n*, 0931-CV08322; *Missouri State Teachers Ass’n*, 1331-CC00904.; and *Bayless Education Association*, 09SL-CC01481. In these cases, trial courts struggled to determine whether school board labor practices were legal under the new *Independence* interpretation of Article I, Section 29 of the Missouri Constitution, often relying on principles divined from federal labor law to interpret language in the Missouri Constitution.
- 55 *Coalition of Police*, 386 S.W.3d 755.
- 56 *Id.* at 764.
- 57 *American Federation of Teachers*, 387 S.W.3d 360.
- 58 The National Federation of Federal Employees and the American



Federation of Government Employees are two major federal employee unions. Postal workers are represented by several unions, including the American Postal Workers Union, the National Association of Letter Carriers, the National Postal Mail Handler's Union, and the National Rural Letter Carriers' Association.

59 All state and local government employees other than teachers and law enforcement are subject to the Public Sector Labor Law.

60 See "Active Labor Agreements," Office of Administration, Division of Personnel.

61 *Id.*

62 Firefighters Institute for Racial Equality.

63 Missouri Secretary of State, 2008 Ballot Measures.

64 The Missouri Home Care Union, <http://www.missourihomecareunion.org/member-resources/>.

65 § 105.510 RSMo.

66 *Independence-NEA*, 223 S.W.3d 131.

67 In a 2014 email survey of school districts' labor relations policies, we found many administrators referred to formal discussions with teachers' associations as "meet and confer" even when the documents yielded by these discussions would likely be legally binding on the district pursuant to the *Independence* decision.

68 AFT mission statement.

69 Over 45,000, according to MSTAs website, <http://www.msta.org/about/>.

70 MSTA Frequently Asked Questions, <http://www.msta.org/about/faq/>.

71 See *Missouri State Teachers Ass'n*, 1331-CC00904 at 10.

72 The Association of American Educators (AAE) is a national, non-union, professional educators' organization. They offer many of the benefits of a union teachers' association without engaging in collective bargaining or partisan activity, <http://www.aaeteachers.org/>.

73 See *Coalition of Police*, 386 S.W.3d 755.

74 See 2014-17 St. Louis Police Officers Association Contract at 8.

75 In Saint Louis, sergeants are represented by St. Louis Police Leadership Organization while officers are represented by the St. Louis Police Officers Association.

76 Ethical Society of Police, About, <http://www.esopinc.com/#!about/c136u>.

77 § 105.510 RSMo.

78 See *Schaffer*, 869 S.W.2d 163.

79 Agency fees is the technical term for these mandatory contributions. Unions sometimes call them "fair share" fees. People critical of agency fees often call them "unfair share" fees.

80 See 2014-17 St. Louis Police Officers Association Contract at 8.

81 See Labor Agreements Between the State of Missouri Office of Administration The Department of Corrections Board of Probation & Parole: for Probation and Parole Officers I, II, and III; for Probation and Parole Assistants I/II; and for Patient Care Professionals.

82 *Ellis*, 466 U.S. 435. See also *Lehnert*, 500 US 507.

83 Kovacs, "Unions' Taxpayer Subsidized Activity."

84 See Memorandum of Understanding 2013 – 2014, Hillsboro and Warren County National Education Association Warren County MSTA-CTA.85 *St. Louis Teachers Association*, 544 S.W.2d 573, 575.

85 *St. Louis Teachers Association*, 544 S.W.2d 573, 575.

86 For example, Missouri Corrections Officers Association's labor agreement for October 1, 2014 to September 30, 2018, states, "[t]he Employer and the Union recognize that strikes, work interruptions or any type of work curtailments or slowdowns are prohibited in accordance with Section 105.530, RSMo."

87 See Labor Organization Commenters, *Comments on Proposed Guidance*. A coalition of major labor organizations, including AFL-CIO, AFSCME, AFT, IAM, NEA, SEIU, and UFCW, commented on proposed IRS regulations that would change the ability of tax-exempt organizations to engage in political activity. The commenters argue that new rules should not apply to labor unions in any way that hampers their ability to engage in electioneering or other political activity because such political activities are critical to their mission.

88 *Id.*

89 See Center for Responsive Politics, Heavy Hitters: Top All-Time Donors, 1989-2014, <https://www.opensecrets.org/orgs/list.php>.

90 § 105.525 RSMo.

91 8 CSR 40-2.010(1)(H).

92 § 105.525 RSMo.

93 I say collective bargaining meetings "likely can be closed" here because there is some ambiguity. On the one hand, public bodies may close a contract negotiation, and courts often view collective bargaining agreements through the metaphor of the contract. On the other hand, Missouri's Sunshine Law is supposed to be liberally construed and a collective bargaining agreement is not simply a contract. I don't want to presume that collective bargaining sessions are exempt from sunshine laws as long as a possibility exists that, given the right set of facts, a court might find collective bargaining sessions must be open to the public. For the argument that collective bargaining sessions are contract negotiations, which may be closed pursuant to the Sunshine Law, see Attorney General, Opinion No. 83-2009, Missouri, April 16, 2009.

94 *Id.*

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